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W.P. Nos.2133 and 30140 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HON'BLE MS. JUSTICE R.N. MANJULA

W.P. Nos.2133 & 30140 of 2023 & W.M.P. Nos.2221, 10458 & 10459 of 2023

W.P. No.2133 of 2023:

The Management of
Cognizant Technology Solutions India Pvt. Ltd.
Ramanujan I.T. Park, Taramani
Chennai 600 113
having its registered office at
No.5/535, Old Mahabalipuram Road
Okkiyam Thoraipakkam, Chennai 600 097
represented by its
Associate Director – Legal

Petitioner

vs.

R. Senthil Kumar

Respondent

W.P. No.30140 of 2023:

R. Senthil Kumar

Petitioner

vs.

The Management
Cognizant Technology Solutions (C.T.S.)
Ramanujan I.T. Park
Tharamani
Chennai 600 113

Respondent

Prayer in W.P. No.2133 of 2023:

Writ Petition filed under Article 226 of the Constitution of India

seeking a writ of certiorari to call for the records and quash the award dated

<https://www.mhc.tn.gov.in/judis>



20.12.2022 passed in O.P. No.140 of 2019 by the III Additional Labour Court, Chennai.

Prayer in W.P. No.30140 of 2023:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the award dated 20.12.2022 passed by the III Additional Labour Court, Chennai in O.P. No.140 of 2019, quash the same and consequently, direct the respondent Management to pay full backwages and other attendant benefits to the petitioner from the date of dismissal, in addition to the reliefs already granted.

For petitioner in
W.P. No.2133 of 2023
and respondent in
W.P. No.30140 of 2023

Mr. C. Manohar Gupta

For respondent in
W.P. No.2133 of 2023
and petitioner in
W.P. No.30140 of 2023

Ms. V. Porkodi

COMMON ORDER

Since both the instant writ petitions have been filed challenging one and the same award, viz., award dated 20.12.2022 passed by the III Additional Labour Court, Chennai (for brevity “the Labour Court”), they are considered and decided by this common order.



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2. While W.P. No.2133 of 2023 has been filed by the Management of Cognizant Technology Solutions India Pvt. Ltd., W.P. No.30140 of 2023 has been filed by one of its workmen by name Senthilkumar.

3. To avoid prolixity and for the sake of convenient discussion, the workman and the Management will be adverted to as the petitioner and the respondent, respectively.

4. The facts leading to the filing of these writ petitions are succinctly stated as follows:

4.1 The petitioner was working with the respondent as a Tech Leader and he was engaged in various projects of the respondent. From September 2018 onwards, the petitioner's services could not be utilised as he was unable to fit himself into any of the projects executed by the respondent. Hence, the petitioner was kept in corporate deployable pool for the period between 07.09.2018 to 25.02.2019 with full wages with an idea to engage him when a better project is taken up by the respondent.



4.2 During the period between 07.09.2018 and 25.02.2019, the petitioner was offered with four projects, *i.e.*, two in Kolkata, one in Pune and one in Coimbatore. The petitioner accepted only the Coimbatore project. However, when he expressed his acceptance, the opportunity was lost. As the petitioner was remaining idle without executing any work, but, by receiving full salary for more than five months, he was issued with a show cause notice dated 20.02.2019. In his reply dated 22.02.2019 to the said show cause notice, the petitioner stated that he was ready to relocate to any place in India or abroad even though he had requested earlier to allocate any project only in Chennai and that he was ready to get trained in any other technology as well.

4.3 As there was no project readily available for the respondent to be offered to the petitioner and also taking into consideration the fact that the petitioner had, at the first instance, refused to accept the projects offered to him, the respondent framed charges against him for disobedience. The said charges having been proved, the petitioner was inflicted with the punishment of termination from service *vide* order dated 25.02.2019.



4.4 Thereagainst, the petitioner raised an industrial dispute being O.P.No.140 of 2019 before the Labour Court.

4.5 The Labour Court, on consideration of the arguments advanced on either side and also the oral and documentary evidence, *vide* award dated 20.12.2022, held that the termination of the petitioner is illegal and unjustifiable and ordered for his reinstatement into service with 50% backwages from the date of termination till the date of the award and directed the respondent to post him at any place in India or abroad. However, the petitioner was not ordered to be given any attendant benefit.

4.6 Aggrieved by the denial of 50% backwages and other attendant benefits, the petitioner has filed W.P. No.30140 of 2023 and challenging the award insofar as it relates to reinstatement of the petitioner and granting of 50% backwages to him, the respondent has filed W.P. No.2133 of 2023.

5. The learned counsel for the petitioner contended that when the Labour Court has rightly considered the willingness expressed by the petitioner to undertake any project, he ought to have been granted 100% backwages by the Labour Court, together with continuity of service and other attendant benefits.



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6. *Per contra*, it is contended by the learned counsel for the respondent that notwithstanding its finding that the petitioner had failed to attend the ADP/CDP orientations sessions held on 11th September and 18th September, which is mandatory, the Labour Court has fallen into error by granting the relief of reinstatement into service with 50% backwages. It is further contended by the learned counsel for the respondent that the Labour Court, without appreciating the materials on record in a right perspective, has held as though the petitioner had readily accepted the projects offered to him and that the order of termination is illegal and unjustifiable.

7. It is no doubt true that the petitioner was kept in the corporate deployable pool from 07.09.2018 to 25.02.2019 as there was no suitable project available for him. However, the stand of the Management is that even for the projects available outside Chennai between 07.09.2018 and 25.02.2019, the petitioner refused and he remained idle and was drawing salary for the said period which spanned over to 5 months. On this ground, he was issued with a show cause notice which culminated in his termination from service.



8. What weighed in the mind of the Labour Court was the averment made by the petitioner in his reply to the show cause notice which is marked as Ex.W.9. In the said document, the petitioner has stated that he was ready to relocate to any place in India or abroad and if possible, he may be accommodated in any project in Chennai. He has further stated therein that he was also ready to get trained in any other technology. But, it is pertinent to note that the said reply has been given by the petitioner only to the show cause notice issued to him and the fact remains that when four projects were offered to him, he did not readily accept them. After the outstation projects slipped out of the hands of the respondent, the petitioner had chosen to accept one project at Coimbatore. So, the petitioner was kept in the corporate deployable pool by the respondent in order to get a suitable project for him.

9. As the petitioner knew that he was drawing salary without executing any work, he ought to have readily accepted the projects offered to him. However, a reading of the petitioner's reply dated 22.02.2019 to the show cause notice would show that he had a second thought and then only, he expressed his willingness to relocate to any place in India or abroad. Had the petitioner expressed his willingness at the first instance, *i.e.*, soon after he was offered with the projects, he could have very well avoided his



termination. This important point was lost sight of by the Labour Court and the Labour Court has placed strong reliance on the statement of the petitioner in the reply to the show cause notice to construe that he was all along willing to undertake any project. Mere frequent email communications between the petitioner and the respondent are not sufficient unless the petitioner showed any active sign of engaging himself in any of the projects offered to him.

10. However, it is submitted by the learned counsel for the petitioner that the petitioner was terminated from service without getting prior approval under Section 33(2)(b) of the Industrial Disputes Act, 1947, even when the dispute under Section 2(k), *ibid.*, was pending with the Labour Officer. When the dispute is pending with the Labour Officer, it is mandatory on the part of the Management to get prior approval to terminate a workman. In the instant case, as the petitioner has been terminated from service even when the dispute was pending with the Labour Officer, it has been rightly recorded by the Labour Court that there is violation of Section 33(2)(b), *ibid.* on the part of the respondent. The tearing urgency exhibited by the respondent to terminate the petitioner from service without even waiting for the outcome of the dispute referred to the Labour Officer and without considering the possibility of re-engaging the petitioner in any of the projects even after he



had expressed his willingness to relocate to any place in India or abroad, would show that the petitioner deserves only an action/punishment in commensurate with his refusal at the first instance and not capital punishment, *i.e.*, termination, which is grossly disproportionate to his act of disobedience. As the petitioner was settled in Chennai, he would have found it inconvenient to attend the outstation projects offered to him. Later, he got convinced himself and that could have been viewed with a little lenience by the respondent. However, that cannot be the only mitigating factor to reduce the seriousness of disobedience on the part of the petitioner.

11. Be that as it may, taking note of the overall facts and circumstances of the case, it would suffice, had the Labour Court, in the interests of justice, allowed the industrial dispute to the limited extent of granting the relief of reinstatement alone. Further, as the petitioner was drawing salary for over five months without executing any work and also refused to take up the projects instantly when they were offered to him, besides refusing to attend ADP/CDP orientation sessions, the Labour Court could have viewed the matter seriously for denying the backwages.



12. Considering the fact that the petitioner has been terminated without complying with the mandates of Section 33(2)(b), *ibid.* and he also expressed his willingness, at least, at a later point of time, to be engaged in any project in India or abroad, the award of the Labour Court is modified into one of reinstatement without backwages, but, with continuity of service, excluding the period during which he remained out of employment, *viz.*, from 07.09.2018 to 25.02.2019. As far as attendant benefits are concerned also, the period during which the petitioner remained out of employment, shall not be taken into account, but, for the remaining period, the petitioner is entitled to attendant benefits.

With the aforesaid modification of the award of the Labour Court, both the writ petitions stand disposed of. Costs made easy. Connected W.M.Ps. stand closed.

23.09.2024

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W.P. Nos.2133 and 30140 of 2023

R.N. MANJULA, J.

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Common order in
W.P. Nos.2133 and 30140 of 2023

23.09.2024